

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

Case No. **EDCV 17-758-KK**

Date: August 31, 2017

Title: ***Francisca Crosthwaite v. County of San Bernardino, et al.***

Present: The Honorable **KENLY KIYA KATO, UNITED STATES MAGISTRATE JUDGE**

DEB TAYLOR

Deputy Clerk

Not Reported

Court Reporter

Attorney(s) Present for Plaintiff(s):

None Present

Attorney(s) Present for Defendant(s):

None Present

Proceedings: (In Chambers) Order Granting Defendants' Motion to Stay [Dkt. 15]

I.
INTRODUCTION

On August 2, 2017, County of San Bernardino, Sheriff John McMahon, Deputy T. Verral, Deputy Pangburn, Deputy Trevor James, and Deputy Tommy Dickey (“Defendants”) filed the instant Motion to Stay this case. Dkt. 15. Plaintiff Francisca Crosthwaite (“Plaintiff”) has not filed an Opposition to the Motion to Stay. For the reasons set forth below, Defendants’ Motion is GRANTED. The hearing on the Motion to Stay currently set for September 7, 2017 is hereby VACATED.

II.
PROCEDURAL HISTORY

On April 19, 2017, Plaintiff filed a Complaint against Defendants alleging violation of her Fourth Amendment rights as well as state law claims for “arrest without probable cause,” malicious prosecution, and intentional infliction of emotional distress arising out of an incident that occurred on March 18, 2016. Dkt. 1. Plaintiff alleges her purse was seized without probable cause, she was transported in the backseat of a police car against her will, and then beaten by Deputy Verral while other officers failed to intervene. Id.

On May 6, 2016, Plaintiff was charged in The People of the State of California v. Francisca Bajarrano Crosthwaite, Victorville Superior Court Case No. 16-CR-17873, with misdemeanor resisting an officer on March 18, 2016 in violation of section 69-M of the California Penal Code. Dkt. 15 at 6-7, Declaration of Janine Highiet-Ivicevic (“Highiet-Ivicevic Decl.”), ¶ 2, Ex. 2.¹ Plaintiff’s criminal trial in Case No. 16-CR-17873 is scheduled for September 11, 2017. Id.

On July 25, 2017, in response to an email from Defendants’ counsel, Plaintiff’s counsel left Defendants’ counsel a voicemail indicating Plaintiff would not oppose staying the case pending the outcome of Plaintiff’s criminal case. Id. ¶ 1.

On August 2, 2017, defendants County of San Bernardino, McMahon, Verral, James, and Dickey filed an Answer, which they then amended on August 8, 2017. Dkts. 12, 20. On August 2, 2017, the same defendants also filed the instant Motion to Stay. Dkt. 15.

On August 22, 2017, defendant Pangburn filed an Answer. Dkt. 23.

Plaintiff has not filed an opposition to the Motion to Stay.

III. **DISCUSSION**

Local Rule 7-12 states that “[t]he failure to file any required document, or the failure to file it within the dealing, may be deemed consent to the granting or denial of the motion, with the exception that a motion pursuant to [Federal Rule of Civil Procedure] 56 may not be granted solely based on the failure to file an opposition.” L.R. 7-12; see also Ghazali v. Moran, 46 F.3d 52, 54 (9th Cir. 1995) (affirming the grant of an unopposed motion to dismiss, deeming a pro se litigant’s failure to oppose as consent to granting the motion).

Defendants present a number of arguments in support of the Motion to Stay. Plaintiff, who is represented by counsel, has failed to file an Opposition. Pursuant to Local Rule 7-12, this Court may interpret such failure to oppose as Plaintiff’s consent to granting Defendants’ Motion. Thus, this Court now exercises its discretion to GRANT Defendants’ Motion to Stay.

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¹ Defendants request the Court take judicial notice of the electronic docket in Plaintiff’s criminal case. The Court may take judicial notice of Plaintiff’s proceedings in this Court and in the state courts. See In re Korean Air Lines Co., 642 F.3d 685, 689 n.1 (9th Cir. 2011). Hence, Defendants’ request is GRANTED.

IV.
ORDER

Therefore, the Court ORDERS as follows:

(1) Defendants' Motion to Stay is hereby GRANTED pending resolution of Plaintiff's pending criminal case, Victorville Superior Court Case No. 16-CR-17873.

(2) The hearing on Defendants' Motion to Stay currently set for September 7, 2017 is hereby VACATED.

(3) The parties shall file a joint status report **every sixty (60) days** regarding the pending criminal case, Victorville Superior Court Case No. 16-CR-17873.

IT IS SO ORDERED.